

CITY OF MOUNTAIN VIEW MEMORANDUM

DATE: September 19, 2003

TO: City Council

FROM: Michael D. Martello, City Attorney

SUBJECT: SEPTEMBER 23, 2003 STUDY SESSION—CODE UPDATE ITEMS

INTRODUCTION

Periodically, staff presents various items to the Council in the form of an ordinance for updating the Mountain View City Code. These items typically concern every department and seek to conform the code to State law, provide more clarity or to assist enforcement. The last code update ordinance was adopted by the Council in March 2001.

The descriptions of possible code update provisions are provided in narrative format and do not include draft ordinance language. In this study session, the Council will provide direction as to whether proposed sections should move forward, be studied further or if more study in a particular area is required.

NEIGHBORHOOD PRESERVATION

- **Relocation Assistance for Uninhabitable Dwellings**

As part of the last update ordinance, the Council added a provision prohibiting retaliation against a tenant who complained about substandard housing.

A proposal for a new companion provision arose out of discussions with Peninsula Interfaith Action (PIA) and would provide the City with the ability to impose the sanction of relocation assistance in favor of any tenant who was displaced as a result of an enforcement action. The relocation assistance, as proposed, would not exist in a vacuum, meaning that it would not apply merely because a landlord decided voluntarily to empty a unit for rehab. It would only be available as a

mitigation measure if the City had initiated an enforcement action against the landlord.

From a functional standpoint, it will be proposed that the landlord be responsible for either finding replacement housing for the displaced individual of a similar size and cost or paying the differential between the rent previously paid by the displaced individual and the higher rent at the new housing unit for a period not to exceed six (6) months.

- Oversized Vehicles—Residential Streets

Oversized vehicles pose a problem on narrow streets, typically in residential areas. The vehicles can be large recreational vehicles or the notorious stake-bed truck and wood chipper often parked on Mercy Street. Currently, the Police Department has two tools to deal with this issue: (1) the prohibition of commercial vehicles over a certain gross vehicle weight on residential streets; and (2) the seventy-two (72) hour parking limitation. Neither of these worked with respect to the wood chipper, and most residents in the Old Mountain View Neighborhood believe this presented a dangerous traffic situation.

Because it is possible to have a large vehicle that is not over the gross vehicle weight limit (10,000 pounds), some cities have adopted code sections which allow for ticketing or towing of a commercial vehicle, after notice, when the vehicle is above a certain size dimension (feet and inches).

The Council should provide direction if they want to pursue same.

- Definition of Multi-Family Housing

The Council is well familiar with complaints raised by one landlord relative to the definition of multi-family housing. Prior to 1996, the program defined multi-family housing to include three or more dwelling units within a single building that are used as rental housing. In August 1996, after study by the Council Neighborhoods Committee, the program was amended to redefine multi-family housing as:

"any situation in which three (3) or more dwelling units as defined in Section 36.3.25 of the Mountain View City Code exist on a single parcel of land and are used as rental housing." ¹

The 1996 staff report is attached and sets forth the reasons for the change, which affected an estimated 140 properties and 400 units. No other complaints about this change have been received.

As a result of the recent budget process, the Matrix Group is conducting an independent study of the Fire Prevention and the Multi-Family Housing Programs. The Fire Department expects changes to be recommended for both programs as a result of the study. Therefore, Council could direct changes to be made to the definition as part of the update ordinance or await the outcome of the Matrix study.

- Metal Riot Bars on Windows

In communities with high-crime areas or combat zones, the accordion metal bars are a common "window treatment." Mountain View has seen several of these and they are obviously unrelated to the ambient level of crime.

This concern has been raised by members of the public and the Council and the possibility of these devices proliferating without check is of concern. The proposed ordinance will prohibit these devices.

- Disabled Access Laws

This change would provide a City Code section to be cited when people block handicap access. The predominant aim of this section would be to provide a section that Police and Code Enforcement Officers could cite when wheelchair ramps are blocked with signs; however, it could be utilized in other situations to eliminate barriers to accessibility.

Mountain View has a great track record of trying to enhance accessibility as well as correct impediments to same. The one area that continues to be a challenge is the accessibility on sidewalks, wheelchair ramps and entrances to business. The proposed ordinance would provide a section to cite when violations occur. A copy of the letter city attorneys received from Bill Lockyer is attached.

¹ This reference needs to be changed to A36.95.020. This will be done in the update ordinance as well.

PLANNING AND ZONING

- **Definition of Dwelling Unit/SFD**

We need to make slight amendments to the definition of Dwelling Unit and Single-Family Dwelling (SFD) in Section A36.95.020 to provide internal consistency and conform to State law.

The change to "Dwelling" or "Dwelling Unit" will be a technical change to clarify that an accessory unit on a property can be considered a dwelling unit even if the structure does not have a kitchen. The reference to "family" will be replaced with "single housekeeping unit" to conform to State law.

- **No Assignment of Parking Spaces Unless Approved**

Most commercial centers, whether they are retail, a food market or office buildings, contain only the minimum required parking spaces for the approved uses. If the property owner assigns parking spaces within a center for particular uses, it can create a shortage of parking spaces for the other uses because when those assigned spaces are empty, they are unavailable for use by patrons of other uses.

It is current City policy that parking spaces can only be assigned as approved through the permitting process or through the CC&Rs. The change would clarify that policy and provide a means by which approvals could be granted.

- **Storage Containers**

We currently have commercial seagoing storage containers as attachments to houses in residential backyards and all over our commercial and industrial space. In the commercial/industrial situations, they typically displace required parking, a traffic aisle or encroach into required setbacks.

The proposed amendment would clarify the containers are not permitted in residential zones and are allowable in commercial and industrial zones provided they are utilized for storage only, not placed on required parking, meet height and setback requirements, not visible from the street and are not provided with utility hookups.

- Mini-Storage in the CS (Commercial-Service) District

When the Council adopted the commercial zoning amendments in 2002, the letter "P" for permitted was inadvertently placed next to the mini-storage uses in the Commercial Service (CS) Zone. The mini-storage or personal storage uses are only allowed in the industrial zones, and the proposed amendment will correct this.

- How High is the Building?

Currently, we have four (4) somewhat confusing definitions for "height of building, nonresidential"; "height of building, residential"; "height of wall, nonresidential"; and "height of wall, residential." The proposed amendment will provide one way of measuring a wall; one way of measuring building height.

HOTELS, MOTELS: LENGTH OF STAY

- Clarify that Hotels and Motels are Intended for Transience Occupancy Only

Our current zoning code defines "hotels and motels" (and "motels" separately) to be uses intended for overnight or other temporary lodging (less than 30 days). The proposed change will clarify that hotels and motels cannot be used as permanent or semi-permanent housing, and delete the separate definition of "motel."

This issue presented itself prior to the current level of investment along El Camino Real. Motels in the lower end of the economic spectrum would rent units as permanent SROs. Sometimes they would mix this in with transient occupants. The units are not built for same and are not designed to have hot plates, microwave ovens and makeshift stoves and other such appliances on a regular basis. The most acute problem was the presence of drugs, prostitution and other vice activities. From a fiscal standpoint, these uses are zoned commercial and intended to produce revenue for City programs. They do not pay transient occupancy taxes when rented on a monthly basis.

SEGWAYS/SCOOTERS ON SIDEWALKS

Currently, motorized scooters are prohibited on paths or walkways in public parks. The backers of the Segway were powerful enough to achieve State legislation allowing them on sidewalks subject to a local ordinance to the contrary. The Bicycle/Pedestrian Advisory Committee has recommended the prohibition of the devices on sidewalks. This issue is to be scheduled before the Council Transportation Committee forthwith.

SUBDIVISIONS

- **Park In-Lieu Fees: Condo Conversions**

Pursuant to Council direction, the proposed ordinance would clarify Chapter 41 of the City Code relative to condominium conversions when new units or expansion of existing space occurs. Council will recall from the Rock Street condo conversion that a park in-lieu fee was not imposed even though new bedrooms and some replacement units were added. Council directed staff to prepare a clarifying amendment that would allow the Council to impose park in-lieu fees when, as part of the condo conversion process, new units, bedrooms or floor space is added.

- **General Provision: In Conformance with State Law**

A general provision will be added to the City subdivision provisions (Chapter 28) to clarify that the City's subdivision code will be read in concert with the State Subdivision Map Act. Where inconsistencies exist that are preemptive, the State Map Act will prevail. While this is generally a rule of statutory construction, the City's subdivision provisions are in need of a complete study and overhaul which will take some time. Because issues arise from time to time where our code is in conflict with State law, staff believes that a general provision such as this will assist with interpretations, when necessary.

SMOKING

Based on comments made at various neighborhood meetings, the question arises as to whether we should regulate the littering of cigarette butts in front of bars and restaurants. The proposed amendment would not regulate smoking around the entrance unless the Council so directs but would rather give enforcement personnel an easier section to cite if the owner does not police up the area around their entrance or other areas where their patrons regularly go outside to smoke.

- **Tobacco Use at Playgrounds**

In 2001, the state adopted AB 188, adding Section 104495 to the Health and Safety Code prohibiting smoking or discarding of cigarettes within the boundaries of any playground or tot lot sandbox facility. This proposed amendment would provide a section that could be cited by police, upon complaint, and the Council could

direct that the ordinance be made stricter, such as the establishment of a 15' to 20' smoke-free environment around the play area. A copy of the January 8, 2002 memorandum from the California Department of Health Services is attached.

PUBLIC WORKS

- **Maintenance of Decorative Light Posts**

A proposed ordinance amendment would clarify that it is illegal to tape signs to light posts. Currently in the downtown, people often use duct tape to affix garage sale signs, signs for business opportunities and signs for special events (gun shows, doll shows, etc.). Duct tape has a way of damaging a light post and Public Works indicates it can cost as much as \$500 or \$1,000 to repair the damage.

The second ordinance amendment would be to prohibit the strapping or chaining of bicycles to decorative light posts in the transit center which already has a bicycle facility.

REPEAL OF SECTIONS

With the addition of new language in the City Code, it is always good to do a little housekeeping and cleanup of sections which are no longer applicable or enforceable. Departments are still reviewing their particular chapters for anachronistic sections and we expect more sections to be proposed for repeal.

- Section 9.75(a)—Prohibits the parking of a vehicle on a roadway or parking lot for the purpose of displaying such vehicles for sale. These ordinances were ruled unconstitutional by the California courts more than 20 years ago.
- Section 21.34—Prohibits spitting in public and was adopted in 1938.
- Section 21.35—Prohibits standing in front of theaters, churches or public resorts when requested to move by a police officer. This was likewise adopted as part of the 1938 code and is vague and overbroad from a First Amendment standpoint.
- Section 21.36, Switchblade Knives—This section, adopted in 1957, has been preempted by State law for some time.

Prepared by:

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Attachments

cc: CM